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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

MEDFORD DIVISION

**ST. TIMOTHY'S EPISCOPAL CHURCH, by
and through THE DIOCESE OF OREGON,
dba THE EPISCOPAL DIOCESE OF
OREGON, an Oregon nonprofit corporation,
and REVEREND JAMES BERNARD
LINDLEY, vicar of St. Timothy's Episcopal
Church,**

Case No. 1:22-cv-00156-CL

**DEFENDANT CITY OF
BROOKINGS' RESPONSE TO
BRIEF OF AMICUS CURIAE
NOTRE DAME LAW SCHOOL
RELIGIOUS LIBERTY CLINIC**

Plaintiffs,

v.

**CITY OF BROOKINGS, an Oregon municipal
government,**

Defendant.

Defendant City of Brookings responds briefly to two legal points presented in the amicus brief filed by Notre Dame Law School Religious Liberty Clinic ("Amicus"). Regarding the remainder of the amicus brief, the City of Brookings simply notes that the Amicus appears to have assumed Plaintiffs' alleged facts from Plaintiffs' Motion for Summary Judgment were all true, without reviewing the underlying evidence, thereby reaching conclusions unsupported by

the evidence in this case. Specifically, the Amicus assumes without supporting evidence that the City of Brookings was restricting Plaintiffs' ability to continue its benevolent meal services, when in fact the City's ordinances do the opposite.

A. Free Exercise Clause Standard

Defendant City of Brookings agrees with the Amicus that the Free Exercise Clause of the First Amendment to the United States Constitution "generally does not excuse a person of [the] obligation to comply with a neutral, generally applicable law that incidentally burdens [the] religious exercise." Amicus brief, p. 3 (citing *Employment Div. v. Smith*, 494 U.S. 872 (1990)). As discussed in Defendant City of Brookings' Motion for Summary Judgment, when a law is neutral and of general applicability, meaning the law does not "single out houses of worship for especially harsh treatment," then rational basis review applies, even if there is an "incidental effect of burdening a particular religious practice." Defendant's Motion, p. 26. As cited by Amicus, the Ordinance at issue is a neutral law of general applicability, and rational basis review applies. To invalidate a law reviewed under rational basis, "[t]he burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it." Defendant's Motion, p. 27. Here, the City adopted Ordinance #21-O-795, and recently adopted Ordinance #23-O-809, in order to *allow* benevolent meal services to continue in the same manner they are currently being provided, in order to promote public health and welfare. This is certainly a valid basis for the ordinance, and no violation of the Free Exercise Clause of the First Amendment exists in this case.

B. RLUIPA Purposes Met by City of Brookings

As noted in the amicus brief, RLUIPA was enacted to prohibit governments from using existing land-use regulations, or enacting new land-use regulations, that "impose a substantial burden on a person's religious exercise." Amicus brief, p. 7. Amicus then likens the

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City of Brookings ordinance to a City of Richmond ordinance that imposed a \$1,000 permit application fee and limited the number of persons who could be served at a church's homeless feeding program to 30 per week when at the time the church served thousands per year. Amicus brief, p. 7. Amicus also likens the City of Brookings ordinance to a Washington, D.C. decision prohibiting a church from feeding homeless persons, a Florida order for a church to close, and capacity limitations imposed in Minnesota and Florida. Amicus brief, pp. 8-9, 11-12.

In the present case, it is undisputed that the City of Brookings' ordinances are *allowing* benevolent meals to continue when they are not otherwise allowed, with permit fees waived, and without any limit on the number of persons being served. No church closure is being ordered, no capacity limits are imposed, and no order to stop feeding homeless persons is being issued – the situation at hand is quite the opposite.

Missing from the amicus brief, or any submissions by or on behalf of Plaintiffs, is citation to *any case* striking down a law or ordinance that allows benevolent meal services to continue exactly as they are being served, waiving permit fees, and for the stated purpose of ensuring benevolent meal services can continue once it was determined that such services were not allowed in residential zones where they were being provided. There is no such case, because

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such an ordinance does not impose a substantial burden on religious exercise, it actually alleviates a burden. This is the City of Brookings' ordinance, and it does not violate RLUIPA.

DATED: December 1, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2023 I served the foregoing DEFENDANT CITY OF BROOKINGS' RESPONSE TO BRIEF OF AMICUS CURIAE NOTRE DAME LAW SCHOOL RELIGIOUS LIBERTY CLINIC on:

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- by **electronic** means through the Court's Case Management/Electronic Case File system, which will send automatic notification of filing to each person listed above.

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